

The exemption from the Use Tax and the Retailers' Occupation Tax for nonresident purchasers of motor vehicles who take delivery in Illinois but register the motor vehicle in their home state is allowed for purchases of motor vehicles in Illinois by lessors who then lease the motor vehicle to a nonresident whose home state does not allow a "reciprocal exemption" for a sale to an Illinois purchaser if that lessee's home state would exempt the sale of a motor vehicle to a lessor who then enters into a lease with and delivers in that state the motor vehicle to an Illinois resident who then registers it in Illinois. See 35 ILCS 120/2-5(25-5)). (This is a GIL.)

March 29, 2005

Dear Xxxxx:

This letter is in response to your letter dated March 3, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On behalf of the 1,200 members of the ABC who are licensed, franchised new car dealers in Illinois, we hereby respectfully request a General-Information Letter from the Department in response to the following inquiries regarding changes wrought by Public Act 93-1068.

Our general understanding of the passage of PA 93-1068 is that the bill was meant to respond in-kind to those states which did not offer sales tax reciprocity to Illinois residents such that residents from such a state would not receive an exemption from Illinois taxes. When informed of the possibility of such legislation, this ABC expressed this concern: Illinois automobile dealers must not be put at a competitive disadvantage with any tax change. Representatives from the Department did provide such assurances. Clearly any sales disadvantage would harm not only the dealers but also the State's fiscal condition.

We understand that as of February 1, 2005 the following states do not provide any out-of-state tax exemption to an Illinois resident that purchasing a vehicle in the state: Indiana, Michigan, Florida, Arizona, California, Hawaii, Massachusetts, South Carolina and Vermont (Collectively referred to 'Non-Reciprocity States' or NRS).

In light of this background, I turn to the particular issues that have arisen as result of the PA 93-1068's enactment. For each of the following situations, please answer these questions: 1. Is any Illinois Use or Occupation taxes owed? 2. If Illinois taxes are owed, who must collect the tax, what is the tax rate and to where should the tax be remitted? 3. What impact does the cash down payment or 'capitalized cost reduction' have upon the tax matter?

Scenario #1: An Illinois leasing company purchases a vehicle from an Illinois dealer to lease to a resident of a NRS (in particular Indiana, Michigan and Florida) and the lessee will register and title the vehicle in the lessee's state.

Scenario #1A: Same facts as #1 but the vehicle is titled where the leasing company is located and registered where the lessee's NRS.

Scenario #2: A leasing company from a NRS purchases a vehicle from an Illinois dealer to lease to a resident of the same NRS (in particular Indiana, Michigan and Florida) and the lessee will register and title the vehicle in the lessee's state.

Scenario #3: A leasing company from one NRS purchases a vehicle from an Illinois dealer to lease to a resident of a different NRS and the vehicle will be registered and titled in the Lessee's NRS.

Scenario #3A: Same facts as #3 but the vehicle is titled where the leasing company is located and registered in the lessee's NRS.

Scenario #4: A leasing company from a NRS purchases a vehicle from an Illinois Dealer to lease to a resident of a state which does provide reciprocity and the vehicle will be titled and registered in the lessee's state.

Scenario #4A: Same facts as #4 but the vehicle is titled where the leasing company is located and registered in the lessee's NRS.

If you have any questions or concerns, please do not hesitate to call.

## **DEPARTMENT'S RESPONSE:**

Item (25) of Section 2-5 of the Retailers' Occupation Tax Act provides an exemption from the tax for ". . . a motor vehicle sold in this State to a nonresident even though the motor vehicle is delivered to the nonresident in this State, if the motor vehicle is not to be titled in this State, and if a drive-away permit is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state." (35 ILCS 120/2-5(25))

Item (25-5) of Section 2-5 of the Retailers' Occupation Tax Act, created by Public Act 93-1068 and effective on January 15, 2005, provides in part that "[t]he exemption under item (25) does not apply if the state in which the motor vehicle will be titled does not allow a reciprocal exemption for a

motor vehicle sold and delivered in that state to an Illinois resident but titled in Illinois.” (35 ILCS 120/2-5(25-5))

It has been Department policy under item (25), quoted above, that a motor vehicle purchased in Illinois by a lessor and delivered in Illinois to a lessee who is a nonresident of Illinois and who registers the motor vehicle in the lessee’s state of residence is exempt from the tax imposed under the Retailers’ Occupation Tax Act. The Department has not made a distinction between titling and registering the motor vehicle.

The issue then, is whether, in light of the change to this exemption by item (25-5), a motor vehicle purchased in Illinois by a lessor and delivered in Illinois to a lessee who is a nonresident of Illinois and who registers the motor vehicle in the lessee’s state of residence is exempt from the tax imposed under the Retailers’ Occupation Tax Act, even though the lessee’s state of residence would not exempt an Illinois resident from paying sales tax in that state if the Illinois resident purchased and took delivery of a motor vehicle in that state and registered it in Illinois.

The State of Illinois taxes leases differently for Retailers’ Occupation Tax and Use Tax purposes than the majority of other states. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. The appropriate comparison, then, in determining whether the lessee’s home state “allow[s] a reciprocal exemption” is to determine if the lessor’s purchase in the lessee’s home state of a motor vehicle that the lessor then leases to an Illinois resident for registration in Illinois is exempt from sales and use tax in that State. If the lessor would be exempt from sales tax in that state, then the lessor should be exempt from occupation and use tax in Illinois on the purchase of a vehicle the lessor leases to an Illinois nonresident lessee with delivery in Illinois that will be registered in the lessee’s home state.

Based on this premise, the answers to the scenarios you pose are as follows:

Scenario #1.

1. No Use or Occupation Tax is owed if the lessee’s home state would exempt from sales and use tax a lessor’s purchase of a motor vehicle in that state that the lessor then leases and delivers in that state to an Illinois lessee who registers the motor vehicle in Illinois. In particular, if the lessee’s home state is Indiana, Michigan, or Florida, the sale in Illinois is exempt because these states would exempt a lessor’s purchase for lease as a sale for resale.

2. N/A

3. The cash down payment or “capitalized cost reduction” has no impact.

Scenario # 1A.

1. See the answer to scenario # 1. The sale remains exempt because the motor vehicle is registered in the lessee’s home state.

2. N/A.

3. The cash down payment or “capitalized cost reduction” has no impact.

#### Scenario #2.

1. See the answer to scenario # 1. The sale remains exempt because the motor vehicle is registered in the lessee's home state.
2. N/A.
3. The cash down payment or "capitalized cost reduction" has no impact.

#### Scenario #3.

1. See the answer to scenario # 1. The sale remains exempt because the motor vehicle is registered in the lessee's home state.
2. N/A.
3. The cash down payment or "capitalized cost reduction" has no impact.

#### Scenario #3A.

1. See the answer to scenario # 1. The sale remains exempt because the motor vehicle is registered in the lessee's home state.
2. N/A.
3. The cash down payment or "capitalized cost reduction" has no impact.

#### Scenario #4.

1. No Illinois Use or Occupation Tax is owed. The sale would be exempt under the exemption in place prior to the effective date of Public Act 93-1068 and found in item (25) discussed above (35 ILCS 120/2-5(25)). This exemption continues as before with respect to states allowing a reciprocal exemption.
2. N/A.
3. The cash down payment or "capitalized cost reduction" has no impact.

#### Scenario #4A.

1. No Illinois Use or Occupation Tax is owed. The sale would be exempt under the exemption in place prior to the effective date of Public Act 93-1068 and found in item (25) discussed above (35 ILCS 120/2-5(25)). This exemption continues as before with respect to states allowing a reciprocal exemption. The sale remains exempt because the motor vehicle is registered in the lessee's home state.
2. N/A.
3. The cash down payment or "capitalized cost reduction" has no impact.

To document an exempt sale in the case where the sale is to a lessor who will lease and deliver the vehicle in Illinois to a lessee from a state that does not provide a sales or use exemption

for purchases of motor vehicles by Illinois residents who take delivery in that state but who register the vehicle in Illinois, the seller of the motor vehicle should follow these steps when completing the ST-556 Sales Tax Transaction Return:

- The name of the lessor and lessee, along with the non-Illinois address must appear in Section 1.
- In Step 5, Box G "Other" must be marked. On the line, after "(describe)", the seller should write the 2 letter state ID and "Lease Transaction". For example: "IN Lease Transaction".
- The remainder of the return should be completed as usual.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore  
Associate Counsel

SJM:msk  
Enc.